IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.4133 of 2005

Shri S.M. Sudge ..Petitioner

Vs.
1. Union of India through
the Secretary, Ministry
of Defence & Ors. ...Respondents.

Mr. S.P. Saxena and Mr. A.S. Rao, for the Petitioner
Mr. D.A. Dubey i/b. S.S. Sarkar for Respondent No.1.

CORAM: F.I. REBELLO &
MRS. R.S.DALVI, JJ.
DATE : 16TH DECEMBER, 2005

P.C.

. Rule. Heard forthwith. The petitioner in the instant case had filed Original Application in the Central Administrative Tribunal, which by its order dated 23rd June, 2004 dismissed the Original Application. The petitioner, is presently officiating in the post of Library and Information Officer. As on 16th September, 1997 the pay scale of Library and Information Assistant was 1400-2600 and that of Library and Information Officer 3000-4500/-. The petitioner, previous to the year 1990, was working as Librarian Grade III and was subsequently promoted to the post of Librarian Grade II. The Government of India, Ministry of Defence by their Notification dated 24th July, 1990 issued Office Memorandum considering the report of the Review Committee on Library Staff, under purview of the Central Government and clubbed various existing pay scales ranging from 1200-1800 to 1400-2600 as Library & Information Assistant. By the very same order the Government was pleased to categorise the Librarian from Category I to Category V. Various other instructions were issued in the matter of placement. The Government has also issued Model

Recruitment Rules for various categories. The new Rule in so far as the respondents are concerned are yet to be finalised as the matter is pending. The post of Library & Information Officer in terms of the Model Recruitment Rules can be filled in either by direct recruit or by promotion. In so far as direct recruitment is concerned, the educational qualifications are as set out. For promotion the educational qualification required for a direct recruit are not required. By Notification dated 23rd August, 1994 it was intimated that the NDA Library was upgraded from category II to III. It was further set out as under:-

> "No posts of Library staff will be upgraded as a result of the upgradation of Library from Category -II to III."

By a further Notification dated 19th September, 1997 the Ministry of Defence intimated to the Chief of the Army Staff the sanction for revision of pay scale and designation in the Library of National Defence Academy. The posts were 1 Librarian Information Officer and 2 posts of Library & Information Assistant. We are not concerned with the other posts.

2. It was the case of the petitioner before the Tribunal that one Mrs. V.G. Godse was assigned to perform duty of officiating basis. She, however, resigned from 13th July, 1996. After this period it is the petitioner who has been assigned the duties purely on officiating basis. It is the contention of the respondents that this was merely for smooth

functioning of the Library and does not entitle the petitioner for promotion to the post. It was contended that as per the policy of the Government no employee is considered for promotion beyond one group i.e. from Group "D" to Group "B" or from Group "C" to Group "A". Since the post of Library & Information Assistant is a Group "C" Post, the incumbent holding this post cannot be considered for promotion to Group "A" post directly. The learned Member of the Tribunal after considering various contentions reproduced the relevant paragraphs of the Office Memorandum and thereafter held that as there was a post of Senior Library & Information Assistant which would be the higher post to the post held by the petitioner the petitioner could not be considered for promotion. The Tribunal noted that if the post is advertised it will be open to the petitioner to apply for the same. In these circumstances the Original Application came to be dismissed.

3. The petitioner thereafter filed a Review Petition. In the Review Petition it was pointed out that certain documents which were available with the respondents and which escaped the notice of the petitioner were not brought before the Tribunal and consequently if those documents are taken for consideration then in that event the view taken could not have been taken. It is in these circumstances that the review was sought. It may be mentioned for the sake of clarity that by the subsequent notification the post held by the petitioner was designated as Grade "B" post. The submission, therefore, is that from the Group B post it is permissible for promotion to Group A post as there was no grade in between. The learned

Member of the Tribunal proceeded on the footing that this material was available to the Petitioner and consequently considering the tests required in an application for review this was not a fit case for review and consequently dismissed the review application by order dated 24th March, 2005. The petitioner aggrieved by the said order as also the order passed in the review petition has preferred the present petition.

4. AT the hearing of the petition on behalf of the petitioner learned Counsel submits that the petitioner is eligible for consideration for appointment to the post of Librarian & Information Officer and in fact his post ought to have been so designated. We are not impressed. The petitioner at the relevant time was holding the post of Librarian Grade III. After the Notification of 1990 he was promoted to the post of Librarian Grade II. O.M.4.2 to which our attention was invited in our opinion is totally misplaced. The said Rule only provides for the existing incumbents of Library Incharge. The petitioner on the relevant date i.e. 24th July, 1990 was not Library Incharge and even if he was Library Incharge as the appointment was not on regular basis and could not have been considered. That contention, therefore, must be rejected.

. That brings us to the contention whether considering the subsequent notification issued by the Government of India re-designating various posts based on pay scales and as the petitioner was in the pay scale of not less than Rs.9000/- but less than Rs.13,500/- the post would be classified as Group B

post. This O.M. was issued on 20th April, 1998. If this O.M. is considered the original order passed by the C.A.T. based on the contention urged by the respondents that the person holding a post e.g. a Group C post cannot hold a Group A post, may require to be re-considered. The question is not of holding Group C post or Group A post. The question really would be of following the recruitment rules including the Model Recruitment Rules as framed by the Government of India. The Recruitment Rules provide for appointment to the post of Library and Information Officer both by direct recruitment as also by promotion. In other words the choice for filling the post is of the respondents. Till date the respondents have taken no steps to fill in the post either by nomination i.e. direct recruitment and/or promotion. As per the material on record the Rules are yet to be finalised. It is only on the Rules being finalised and the Respondents opting either for recruitment by way of direct nomination, the contention as urged on behalf of the petitioner perhaps could be considered on the ground that the petitioner is holding a Group B post and consequently is available for consideration for promotion. That does not mean that this Court in the exercise of its writ jurisdiction will issue a mandamus to the respondents on that count, as that is purely within the discretion of the respondents. It is only in the event the respondents exercises the powers conferred upon them arbitrarily will this Court interfere. That situation for the present has not arisen.

. Considering the above, in our opinion the impugned order as well as the order passed in Review Application requires no interference. Consequently, Rules discharged. No

order as to costs.

(**F.I. REBELLO, J.**)

(**MRS.R.S.DALVI.J**)